

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

In re:	§	Chapter 11
	§	
EPTMS, INC.	§	Case No. 17-31729 (HCM)
	§	
DEBTOR	§	

**RESPONSE OF THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS TO
MOTION TO DISMISS OR CONVERT**

The Texas Comptroller of Public Accounts ("Comptroller"), through the Texas Attorney General's Office, responds to the United States Trustee's Motion to dismiss or convert this case (the "Motion").

1. The United States Trustee's Motion was prompted by a notice of default letter sent by the Comptroller to the Debtor for violations of the cash collateral order entered in this case. A copy of the letter is attached as Exhibit 1.

2. The Debtor has failed to pay post-petition sales taxes, in addition to not making payments under the cash collateral order or creating a segregated sales tax account. In particular, the Debtor has not paid sales tax for December 2017 in the amount of over \$20,000, including tax, penalty and interest and has failed to timely file or pay its sales tax return for January 2018. A copy of the Comptroller's mainframe computer screen showing the status of the account as of this date is attached as Exhibit 2.

3. The case should be converted. Unless converted, the Debtor will continue to convert sales tax trust funds. This continuing "bleeding" of state funds should be stopped immediately by the appointment of a trustee.

4. The Comptroller believes a trustee should review this case for Chapter 5, and perhaps other, causes of action. The Court will recall the testimony from the final cash

collateral hearing of the extensive intermingling of personal and business finances between the owner and the Debtor.

5. The undersigned Assistant Attorney General has spoken Kevin Epstein of the United States Trustee's office and he has no objection to conversion of the case rather than dismissal.

WHEREFORE, the Comptroller respectfully requests that this case be converted to Chapter 7.

Respectfully submitted,

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ATTORNEYS FOR THE TEXAS
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CERTIFICATE OF SERVICE

I certify that on March 6, 2018, a true copy of the foregoing was served by the method and to the following parties as indicated:

By First Class Mail:

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By Electronic Means as listed on the Court's ECF Noticing System:

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